

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
DAYTON DIVISION

Kevin J. Stenger,

Plaintiff,

v.

Wagner Industrial Electric, Inc.,

Defendant.

Civil Action No. 3:09-cv-77

CONSENT DECREE

This matter is before the Court for entry of this judgment by consent of the parties to effectuate a compromise and settlement of all claims.

1. Plaintiff, Kevin J. Stenger ("Mr. Stenger"), commenced this action in the United States District Court for the Southern District of Ohio, alleging that defendant, Wagner Industrial Electric, Inc. ("Wagner"), violated the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. § 4301, et seq. ("USERRA") by failing or refusing to promptly reemploy Mr. Stenger to his previous position after his return from active duty military service.

2. Wagner denies the allegations in Mr. Stenger's Complaint and denies that it violated USERRA. Nevertheless, as a result of settlement discussions, Mr. Stenger and Wagner have resolved their differences and have agreed that this action should be settled by entry of this Consent Decree ("Decree"). It is the intent of the parties that this Decree be a final and binding settlement in full disposition of any and all claims alleged in the Complaint filed in this case. By

Mr. Stenger's signature to both this Decree and the "Release of All Claims" attached hereto as Appendix A, Mr. Stenger has indicated his acceptance of the terms of this Decree.

STIPULATIONS

3. Pursuant to USERRA, the parties acknowledge the jurisdiction of the United States District Court for the Southern District of Ohio over the subject matter of this action and of the parties to this case for the purpose of entering and, if necessary, enforcing this Decree.

4. Venue is proper in this district for purposes of entering this Decree and any proceedings related to this Decree only. Wagner agrees that all statutory conditions precedent to the institution of this lawsuit have been fulfilled.

FINDINGS

5. Having examined the provisions of this Decree, the Court finds the following:
- a. The Court has jurisdiction over the subject matter of this action and the parties to this action.
 - b. The provisions of this Decree are lawful, fair, reasonable and just. The rights of the parties are adequately protected by this Decree.
 - c. This Decree conforms with the Federal Rules of Civil Procedure and USERRA, and is not in derogation of the rights and privileges of any person. The entry of this Decree will further the objectives of USERRA, and will be in the best interests of the parties.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED
AS FOLLOWS:

NON-ADMISSION

6. This Decree, being entered with the consent of Mr. Stenger and Wagner, shall not constitute an adjudication or finding on the merits of the case, and shall not be construed as an admission by Wagner of any violations of USERRA. Wagner expressly denies any violation of USERRA.

NON-RETALIATION

7. Wagner shall not take any action against any person – including but not limited to Mr. Stenger – that constitutes retaliation or interference with the exercise of such person's rights under USERRA because such person gave testimony, provided assistance or participated in any manner in any investigation or proceeding in connection with this case.

REMEDIAL RELIEF

8. Not later than thirty (30) days following the entry of this Decree by the Court, and by the methods described below, Wagner shall pay Mr. Stenger by certified check the amount of \$12,000.00 in back pay, less the required employee withholdings and contributions on the back pay award as required by law. Mr. Stenger shall provide Wagner with a current 2009 W-4 form. Wagner shall pay all monies withheld from this back pay award to the appropriate governmental agencies, and shall provide Mr. Stenger with all tax forms, including but not limited to a 2009 W-2 form, as required by law. Wagner also shall separately pay the appropriate employer's contribution to the Social Security fund due on the back pay award *i.e.*, the employer's contribution shall not be deducted from the back pay award to Mr. Stenger. Wagner shall mail the certified check to Mr. Stenger by first class United States mail at the following address:

Kevin J. Stenger
13999 N. Co. Line Rd.
Sunman, IN 47041

9. Within forty five (45) calendar days following the date of entry of this Decree, Wagner shall provide documentation of having paid Mr. Stenger the monetary award due him pursuant to Paragraph 8, *supra*, by mailing such documentation to the following counsel for Mr.

Stenger:

Andrew Braniff
United States Department of Justice
950 Pennsylvania Avenue NW
Civil Rights Division
Employment Litigation Section, PHB, Room 4920
Washington, D.C. 20530

**RETENTION OF JURISDICTION,
DISPUTE RESOLUTION AND COMPLIANCE**

10. The entry of this Decree constitutes the entry of final judgment within the meaning of Rule 54 of the Federal Rules of Civil Procedure on all claims asserted in or that could have been asserted by Mr. Stenger in this action. The Court, however retains jurisdiction over this matter for the purpose of entering appropriate orders interpreting and enforcing this Decree.

11. Upon motion of either party, the Court may schedule a hearing for the purpose of reviewing compliance with this Decree. The parties shall engage in good faith efforts to resolve any dispute concerning compliance prior to seeking a resolution of such dispute by the Court. In the event of a dispute, the parties shall give notice to each other ten (10) business days before moving for review by the Court. The parties may conduct expedited discovery under the Federal Rules of Civil Procedure for the purpose of determining compliance with this Decree or defending against a claim of non-compliance.

EXPIRATION OF THIS DECREE

12. This Decree shall expire, and this action shall be dismissed with prejudice, without further order of this Court nine months from the date of its entry by this Court, provided that Wagner has provided Mr. Stenger with the relief to which he is entitled pursuant to this Decree, and Wagner has otherwise complied with the provisions of this Decree.

MISCELLANEOUS

13. All parties shall bear their own costs and expenses in this action, including attorneys' fees.

14. If any provision of this Decree is found to be unlawful, only the specific provision in question shall be affected and the other provisions shall remain in full force and effect.

15. The terms of this Decree are and shall be binding upon the heirs, successors, and assigns of Mr. Stenger and upon the heirs, successors, and assigns of Wagner.

16. This Decree constitutes the entire agreement and commitments of the parties. Any modifications to this Decree must be mutually agreed upon and memorialized in writing signed by Mr. Stenger and Wagner.

APPROVED, ENTERED AND ORDERED this 4th day of MAY, 2009.

s/Thomas M. Rose May 20, 2009

UNITED STATES DISTRICT JUDGE

Agreed and Consented to:

On behalf of Plaintiff:

Kevin J. Stenger
Kevin J. Stenger

On behalf of Defendant:

James Fortkamp
~~James Fortkamp~~
Gary Laidman, COO

Respectfully Submitted,

/s/ John Gadzichowski
JOHN M. GADZICHOWSKI
(WI Bar No. 1014294)
Chief

/s/ Jodi Danis
/s/ Andrew Braniff
JODI DANIS (DC Bar No. 453493)
Deputy Chief
ANDREW G. BRANIFF (IN Bar No. 71-4263)
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Attorneys for Plaintiff Kevin Stenger

/s/ Stephen Watring
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Attorney for Defendant Wagner
Industrial Electric, Inc.

APPENDIX A
RELEASE OF ALL CLAIMS

Kevin J. Stenger,

Plaintiff,

v.

Civil Action No. 3:09-cv-77

Wagner Industrial Electric, Inc.,

Defendant.

For and in consideration of my acceptance of the relief, or any part of it, to be provided to me pursuant to the provisions of the foregoing Consent Decree ("Decree") I have signed and that is to be entered in the case of *Kevin J. Stenger v. Wagner Industrial Electric, Inc.*, to be filed in the United States District Court for the Southern District of Ohio, I, Kevin J. Stenger, hereby forever release and discharge defendant Wagner Industrial Electric, Inc. ("Wagner"), from all legal and equitable claims arising out of the Complaint in this action and USERRA Case No. OH-2007-00020-10-G-R filed with the United States Department of Labor.

I understand that the relief to be provided to me by Wagner under the terms of the Decree does not constitute an admission by Wagner of the validity of any claim raised by me, or on my behalf. I further understand that Wagner expressly denies having violated any of my legal rights, and that the payments and other terms and conditions set forth in this release are in settlement of disputed claims.

This release constitutes the entire agreement between Wagner and me, without exception or exclusion.

I acknowledge that a copy of the Decree to this action has been made available to me for my review.

**I HAVE READ THIS RELEASE AND UNDERSTAND THE CONTENTS
THEREOF AND I EXECUTE THIS RELEASE OF MY OWN FREE ACT AND DEED.**

Signature:

Kevin J. Stenger
Kevin J. Stenger

Date:

05/04/09

State of Indiana County of Ripley
Subscribed and sworn to before me this 4th day of May 2009

Notary Public

Marilyn E. Todd
Marilyn E. Todd
Residing in Ripley Co.

My Commission expires: 12-21-2009